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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,609	12/02/2003	Kenneth A. Martin	1190.09	4969
	7590 09/03/2004		EXAM	INER
Wendy K. Buskop			PESELEV, ELLI	
Buskop Law Group, P.C.				
Suite 500	- 1		ART UNIT	PAPER NUMBER
1717 St. James Place			1623	
Houston, TX 77056			DATE MAILED: 09/03/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
Office Action Summary	10/725,609	MARTIN ET AL.	
	Examiner	Art Unit	
	Elli Peselev	1623	
The MAILING DATE of this communicate Period for Reply	ion appears on the cover sheet w	rith the correspondence addre	ess
A SHORTENED STATUTORY PERIOD FOR	REPLY IS SET TO EXPIRE 3 N	MONTH(S) FROM	
THE MAILING DATE OF THIS COMMUNICAT	ΓΙΟΝ.		
 Extensions of time may be available under the provisions of 37 after SIX (6) MONTHS from the mailing date of this communication. 	ition	•	
If the period for reply specified above is less than thirty (30) day If NO period for reply is specified above, the maximum statutor Saiture to such writing the second sec	v period will apply and will expire SIX (6) MOI	VITHS from the mailing date of this as	nunication.
Any reply received by the Office later than three months after the)V Statute, cause the application to become A	RANDONED (SELLE C £ 133)	
earned patent term adjustment. See 37 CFR 1.704(b).	-	mody mady roddoo dify	
Status			
1) Responsive to communication(s) filed or	1		
<u> </u>	This action is non-final.		
3) Since this application is in condition for a		ters, prosecution as to the m	erits is
closed in accordance with the practice u			
Disposition of Claims			•
4)⊠ Claim(s) <u>1-18</u> is/are pending in the applie	cation.		
4a) Of the above claim(s) is/are w	ithdrawn from consideration.		
5) Claim(s) is/are allowed.			
6)⊠ Claim(s) <u>1-18</u> is/are rejected.			
7) Claim(s) is/are objected to.		•	
8) Claim(s) are subject to restriction	and/or election requirement.		
Application Papers			
9)☐ The specification is objected to by the Ex	aminer.		

Priority under 35 U.S.C. § 119

12)∐ Ackno	wledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
		b) Some * c) None of:
	1.	Certified copies of the priority documents have been received.
		Certified copies of the priority documents have been received in Application No
		Copies of the certified copies of the priority documents have been received in this National Stage
		application from the International Bureau (PCT Rule 17.2(a)).

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

* See the attached detailed Office action for a list of the certified copies not received.

10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Attachment(s)		
1) 🔲	Notice of References Cited (PTO-892)	
21 M	Notice of Draftsperson's Patent Drawing Povious (DTO 04	

	Notice of Dransperson's Patent Drawing Review (P10-948)
3) 🔀	Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
	Paper No(e)/Mail Data

4) 🔲	Interview Summary (PTO-413)
	Paper No(s)/Mail Date

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____.

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The disclosure is objected to because of the following informalities: page 1 of the specification fails to set forth priority data and the status of the priority application.

Appropriate correction is required.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 3-18 are indefinite in that the preamble of claim 1 reads on a protein bar, however, components a, b, c, d, e and f do not include a protein.

Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

There is no antecedent basis in claim 1 for the protein in claim 2.

There is no antecedent basis in claim 1 for the protein beverage of claims 13-14.

Claim 15 is indefinite in that it is directed to the protein bar of claim 1 further comprising digestive enzyme. However, claim 1 already contains digestive enzyme.

Claim 18 is directed to a method for improving immune systems and promote detoxification in a subject by administering multivitamin protein bar of claim 1.

However, the specification fails to provide any evidence that the protein bar of claim 1 is effective in improving immune systems and promote detoxification in a subject. The specification fails to teach what immune systems are improved and in what way said

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systems are improved. The specification also fails to teach what is meant by "detoxification". Does it mean toxicity caused by an agent, radiation or what?

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 10/725,610. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed compositions are encompassed by the compositions in the copending application.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-22 of copending Application No. 10/725,611. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because the claimed compositions are encompassed by the compositions in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The prior art submitted by applicant has been considered and is cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 9.00-5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elli Peselev